

STATE OF CALIFORNIA



STATE BOARD OF EQUALIZATION

2020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 1799, SACRAMENTO, CALIFORNIA 95808)

(916) 445-4982

GEORGE R. REILLY
First District, San Francisco

IRIS SANKEY
Second District, San Diego

WILLIAM M. BENNETT
Third District, San Rafael

RICHARD NEVINS
Fourth District, Pasadena

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Controller, Sacramento

DOUGLAS D. BELL
Executive Secretary

No. 78/163

September 13, 1978

TO COUNTY ASSESSORS:

ATTORNEY GENERAL'S OPINION CV 78/52

The enclosed Attorney General's Opinion No. CV 78/52 is in regard to disclosing information to members of the Timber Advisory Committee or to county assessors. The conclusion is that the State Board of Equalization may not divulge information it obtains in administering Revenue and Taxation Code Section 38204 regarding timber sales transactions unless so authorized by order of the Governor or by parties to timber sales transactions.

Sincerely,

Verne Walton, Chief
Assessment Standards Division

VW:sk
Enclosure

EVELLE J. YOUNGER
Attorney General

AUGUST 29, 1978

1.

timber is now exempt from local property taxes and instead is subject to a state tax at the time of harvest. Although the tax is administered and collected by the State Board of Equalization (Board), the revenue is primarily redistributed to the counties and local tax agencies to replace the property taxes which had previously been collected. (§§ 38901-38906.)

Under the statutory scheme, the tax rate is applied to the net volume of harvested timber calculated at its "immediate harvest value," defined as the amount the "timber would sell for on the stump at a voluntary sale made in the ordinary course of business for purposes of immediate harvest." (§ 38109.) Every six months the Board is required to estimate the immediate harvest value of each species or subclassification of timber within the various specified timber areas of the state. The values are to be determined:

" . . . from the best evidence available, including (1) gross proceeds from sales on the stump of similar timber of like quality and character at similar locations, or (2) gross proceeds from sales of logs, or of finished products, adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest, or a combination of (1) and (2), and shall be determined in a manner which makes reasonable allowance for differences in age, size, quality, cost of removal, accessibility to point of conversion, market conditions and other relevant factors." (§ 38204.)

In order to perform its statutory duty of estimating the immediate harvest values, the Board requires the reporting of significant amounts of information from parties to timber sales transactions throughout the state. If necessary, the information can be obtained from the parties through the exercise of the Board's subpoena power. (Gov. Code, § 15613.)

The question presented for analysis concerns whether the Board may disclose the information received by it regarding timber sales transactions obtained pursuant to section 38204. The proposed recipients of the information are members of the Timber Advisory Committee (Committee) and local county assessors. For similar reasons, we conclude that neither group may receive the information obtained by the Board in administering section 38204 unless so authorized by the Governor or by the parties to the transactions.

The controlling statute is section 38705, which provides:

"Except as provided in Section 38402, it is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever

the business affairs, operations, or any other information pertaining to any timber owner or any other person required to report to the board or pay a tax pursuant to this part, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public."

In interpreting section 38705, we must ascertain the legislative intent so as to effectuate the purpose of the law. (Cossack v. City of Los Angeles (1974) 11 Cal.3d 726, 732; Select Base Materials v. Board of Equal. (1959) 51 Cal.2d 640, 645.) Where the language of a statute is clear, its plain meaning should be followed in carrying out the legislative purpose. (Great Lakes Properties, Inc. v. City of El Segundo (1977) 19 Cal.3d 152, 155; Leroy T. v. Workmen's Comp. Appeals Bd. (1974) 12 Cal.3d 434, 438.)

The requirement for confidentiality under section 38705 fosters the complete and accurate reporting of information to the Board. (See Sav-On Drugs, Inc. v. Superior Court (1975) 15 Cal.3d 1, 6.) The Board's ability to perform its responsibilities might be impaired if those supplying it with information were not assured that such information would be kept confidential from the public, particularly business competitors. 2/

Although section 38705 provides for exceptions as ordered by the Governor, we have been informed that neither the members of the Committee nor county assessors have been authorized by the Governor to examine the Board's records.

We further note that an exception is made under the statute with regard to section 38402. The latter statute allows county assessors to receive upon request copies of the quarterly tax returns filed by the timber owners. The

2. The parties to the transactions may of course waive the nondisclosure provision of section 38705 established for their benefit. (See Crest Catering Co. v. Superior Court (1965) 62 Cal.2d 274, 277-279; Wilson v. Superior Court (1976) 63 Cal.App.3d 825, 828.)

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information contained in such returns, however, is not the type of information received by the Board in administering section 38204, and thus the section 38402 exception is inapplicable to our discussion.

Manifestly, the Legislature could have provided for disclosure to Committee members and to county assessors under section 38705, if it had wished to do so. ^{3/} We cannot presume, however, that disclosure was intended for either group because the statute allows exceptions in other circumstances. (See Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 195; People ex rel. Cranston v. Bonelli (1971) 15 Cal.App.3d 129, 135.)

Applying the plain meaning of the words used in section 38705 to effectuate the goal of complete and accurate reporting, we conclude that neither the Committee members nor the county assessors may receive confidential information obtained by the Board in estimating the immediate harvest values. (See Webb v. Standard Oil Co. (1957) 49 Cal.2d 509, 512-513; 52 Ops.Cal.Atty.Gen. 194, 196 (1969); 2 Ops.Cal.Atty.Gen. 244, 246 (1943).)

Significantly, we do not believe that the ability of the Committee members or county assessors to perform their functions will be impaired by the strict application of section 38705.

The Committee is composed of ten members, five representing county assessors, two representing timber owners, and one each representing the Board and the Board of Forestry. (§ 431, subd. (c).) The present statutory duties of the Committee are to consult with the Board every third year regarding the value of the various grades of timberland and to consult with the Board every six months regarding the estimates of immediate harvest values. (§§ 434.5,

* * * * *

3. Section 38705 is patterned after section 7556, which has additional paragraphs allowing disclosure by the Board to authorized officers and employees of cities, counties and districts.

subd. (a), 38204, subd. (a).) These duties are advisory in nature and encompass no administrative responsibilities. 4/ The basic flow of information is from the Committee members to the Board, not from the Board to the Committee. The Committee members can adequately perform their consultation function by providing information concerning valuation procedures and by applying their expertise to any questions raised by the Board.

As with the Committee members, the county assessors can satisfactorily perform their statutory duties even though certain information may not be disclosed to them by the Board under section 38705. First, the information contained in the tax returns obtainable by them from the Board under section 38402 may furnish all the relevant information necessary. Second, the assessors have their own power to obtain the records of individual property owners should additional specific data be required. (§§ 441, 470.) It is thus apparent that the provisions of section 38705 will not prevent county assessors from performing their responsibilities.

In summary, it is our conclusion that the Board may not divulge to Committee members or to county assessors data related to timber sales transactions obtained in administering section 38204 unless so authorized by order of the Governor or unless the parties to the transactions waive the confidentiality provisions of section 38705.

* * * * *

4. To insure that the harvested timber bears an equitable and proportionate tax share and that the proceeds flow in a continual and stable manner to the local agencies, the legislative analyst (and not the Committee) is charged with reviewing the yield tax rate, revenue distribution mechanisms, and land valuation procedures every four years; the legislative analyst may request "from the various counties and agencies of the state whatever information is necessary" for the performance of this statutory duty. (§ 38205.)

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